

CANADA

PROVINCE OF QUEBEC  
DISTRICT OF MONTRÉAL

SUPERIOR COURT  
Commercial Division

File: No: 500-11- 057 566 - 198

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Montreal, November 26, 2019

Present: The Honourable David R. Collier,  
J.S.C.

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IN THE MATTER OF NOTICE OF INTENTION  
TO MAKE A PROPOSAL OF:

**BENTLEY LEATHER INC.**

Petitioner

**KPMG INC.**

Trustee to the notice of intention

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## FIRST DAY ORDER

ON READING Bentley Leather Inc.'s *Motion for the issuance of an order (i) creating super-priority charges and other ancillary remedies and (ii) approving a liquidation order* (the "**Motion**") and the exhibits, the affidavit filed in support thereof, relying upon the submissions of counsel and being advised that the interested parties, including secured creditors who are likely to be affected by the charges created herein were given prior notice of the presentation of the Motion;

WHEREFORE, THE COURT:

1. GRANTS the Motion.



## Service

2. DECLARES that sufficient prior notice of the presentation of this Motion has been given by Bentley Leather Inc. ("**Bentley**") to interested parties, including the secured creditors who are likely to be affected by the charges created herein.

## Directors' and Officers' Indemnification and Charge

3. ORDERS that Bentley shall indemnify its directors (the "**Directors**") from all claims relating to any obligations or liabilities they may incur and which have accrued by reason of or in relation to their respective capacities as directors or officers of Bentley after November 25, 2019 at 12:00 AM (the "**Effective Time**"), except where such obligations or liabilities were incurred as a result of such directors' or officers' gross negligence, wilful misconduct or gross or intentional fault as further detailed in Section 64.1 of the *Bankruptcy and Insolvency Act* (the "**BIA**").
4. ORDERS that the Directors of Bentley shall be entitled to the benefit of and are hereby granted a charge and security in its present and future assets, rights, undertakings and properties of every nature and kind whatsoever, and wherever situated, including all proceeds thereof (collectively the "**Property**") to the extent of the aggregate amount of \$2,000,000\$ (the "**Directors' Charge**"), as security for the indemnity provided in paragraph 3 of this Order as it relates to obligations and liabilities that the Directors may incur in such capacity after the Effective Time. The Directors' Charge shall have the priority set out in paragraphs 7 and 8 of this Order.
5. ORDERS that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge, and (b) the Directors shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts for which the Directors are entitled to be indemnified in accordance with paragraph 3 of this Order.



### Administration Charge

6. DECLARES that KPMG Inc., in its capacity as trustee to Bentley's notice of intention (the "NOI Trustee"), the NOI Trustee's legal counsel, if any, Bentley's legal counsel and the NOI Trustee and Bentley's respective advisers, as security for the professional fees and disbursements incurred both before and after the making of the Order and directly related to these proceedings or any other proceedings in the present matter, be entitled to the benefit of and are hereby granted a charge and security in the Property to the extent of the aggregate amount of \$750, 000 (the "Administration Charge"), having the priority established by paragraphs 7 and 8 hereof.

### Priorities and General Provisions Relating to CCAA Charges

7. DECLARES that the priorities of the Administration Charge and Directors' Charge (collectively, the "NOI Charges"), as between them with respect to any Property to which they apply, shall be as follows:
  - (a) first, the Administration Charge; and
  - (b) second, the Directors' Charge;
8. DECLARES that each of the NOI Charges shall rank in priority to any and all other hypothecs, mortgages, liens, security interests, priorities, charges, encumbrances or security of whatever nature or kind (collectively, the "Encumbrances") affecting the Property charged by such Encumbrances.
9. ORDERS that, except as otherwise expressly provided for herein, Bentley shall not grant any Encumbrances in or against any Property that rank in priority to, or *pari passu* with, any of the NOI Charges unless Bentley obtains the prior approval of the Court.
10. DECLARES that each of the NOI Charges shall attach, as of the Effective Time, to all present and future Property of Bentley, notwithstanding any requirement for the consent of any party to any such charge or to comply with any condition precedent.
11. DECLARES that the NOI Charges or the hypothec and other security interests resulting from the new secured loan produced as Exhibit R-13 of the Motion (the "New Security") and the rights and remedies of the beneficiaries of such Charges or New Security, as



applicable, shall be valid and enforceable and shall not otherwise be limited or impaired in any way by: (i) these proceedings and the declaration of insolvency made herein; (ii) any petition for a receiving order filed pursuant to the *BIA* in respect of Bentley or any receiving order made pursuant to any such petition or any assignment in bankruptcy made or deemed to be made in respect of Bentley; or (iii) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any agreement, lease, sub-lease, offer to lease or other arrangement which binds Bentley (a "Third Party Agreement"), and notwithstanding any provision to the contrary in any Third Party Agreement:

- (a) the creation of any of the NOI Charges or the New Security shall not create or be deemed to constitute a breach by Bentley of any Third Party Agreement to which it is a party; and
  - (b) any of the beneficiaries of the NOI Charges or the New Security shall not have liability to any individual, natural person, firm, corporation, partnership, limited liability company, trust, joint venture, association, organization, governmental body or agency, or any other entity (all of the foregoing, collectively being "Persons" and each being a "Person") whatsoever as a result of any breach of any Third Party Agreement caused by or resulting from the creation of the NOI Charges or the New Security.
12. DECLARES that notwithstanding: (i) these proceedings and any declaration of insolvency made herein, (ii) any petition for a receiving order filed pursuant to the *BIA* in respect of Bentley and any receiving order allowing such petition or any assignment in bankruptcy made or deemed to be made in respect of Bentley, and (iii) the provisions of any federal or provincial statute, the payments or disposition of Property made by Bentley pursuant to the Order and the granting of the NOI Charges or the New Security, do not and will not constitute settlements, fraudulent preferences, fraudulent conveyances or other challengeable or reviewable transactions or conduct meriting an oppression remedy under any applicable law.
13. DECLARES that the NOI Charges and the New Security shall be valid and enforceable as against all Property of Bentley and against all Persons, including, without limitation,



any trustee in bankruptcy, receiver, receiver and manager or interim receiver of Bentley, for all purposes.

**General**

14. ORDERS, notwithstanding anything to the contrary in the BIA, Bentley to continue to honour or comply with any customer deposits, pre-payments and similar programs (like gift cards) offered by Bentley on or after November 26, 2016 for such period of time as may be determined between Bentley and Merchant Retail Solutions ULC.
15. ORDERS that until a real property or immovable lease is disclaimed or resiliated in accordance with the BIA, Bentley shall pay all amounts constituting rent or payable as rent under real property or immovable leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable to the landlord under the lease) or as otherwise may be negotiated between Bentley and the landlord from time to time ("Rent"), for the period commencing from and including the date of this Order, twice-monthly in equal payments on the first and fifteenth day of each month, or the immediately following business day if that day is not a business day, in advance (but not in arrears). On the date of the first of such payments, any Rent relating to the period commencing from and including the date of the NOI shall also be paid.
16. ORDERS that no Person shall commence proceedings or enforcement process in any court or tribunal (each, a "Proceeding") against any of the Directors, employees, legal counsel or financial advisers of Bentley in relation to Bentley's business operations and activities or Property of Bentley, without first obtaining leave of this Court, upon five (5) days written notice to Bentley's counsel and to all those referred to in this paragraph whom it is proposed be named in such Proceedings.
17. DECLARES that, except as otherwise specified herein, Bentley and the NOI Trustee are at liberty to serve any notice, proof of claim form, proxy, circular or other document in connection with these proceedings by forwarding copies by prepaid ordinary mail, courier, personal delivery or electronic transmission to Persons or other appropriate parties at their respective given addresses as last shown on the records of Bentley and

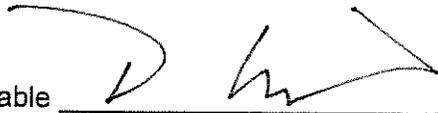
that any such service shall be deemed to be received on the date of delivery if by personal delivery or electronic transmission, on the following business day if delivered by courier, or three business days after mailing if by ordinary mail.

18. DECLARES that Bentley and any party to these proceedings may serve any court materials in these proceedings on all represented parties electronically, by emailing a PDF or other electronic copy of such materials to counsels' email addresses, provided that Bentley shall deliver "hard copies" of such materials upon request to any party as soon as practicable thereafter.
19. DECLARES that, unless otherwise provided herein, under the BIA, or ordered by this Court, no document, order or other material need be served on any Person in respect of these proceedings, unless such Person has served a Notice of Appearance on the solicitors for Bentley and the NOI Trustee and has filed such notice with this Court, or appears on the service list prepared by the NOI Trustee or its attorneys, save and except when an order is sought against a Person not previously involved in these proceedings;
20. DECLARES that any interested Person may apply to this Court to vary or rescind the Order or seek other relief upon five (5) days' notice to Bentley, the NOI Trustee and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order;
21. ORDER that Exhibit R-3, R-4, R-5, R-7, R-9, R-10, R-12, R-13, R-14 and R-16 of the Motion be kept confidential and under seal further order of this Court;
22. DECLARES that the Order and all other orders in these proceedings shall have full force and effect in all provinces and territories in Canada.
23. ORDERS the provisional execution of the Order notwithstanding any appeal.

This 26 November, 2019



Honorable

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COPIE CERTIFIÉE CONFORME  
AU DOCUMENT DÉTENU PAR LA COUR

A handwritten signature in black ink, appearing to read 'Arrens' or similar, with a long horizontal stroke extending to the right.

Personne désignée par le greffier